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SECOND DIVISION

[G.R. NO. 160741, March 22, 2007]

HERMINIA CANDO, PETITIONER, VS. SPS. AURORA OLAZO AND CLAUDIO OLAZO, RESPONDENTS.

D E C I S I O N

TINGA, J.:

The instant petition for review assails the Decision of the Court of Appeals dated 13 November 2003 in CA G.R. CV No. 61151 captioned "Herminia Cando v. Spouses Aurora Olazo and Claudio Olazo."[1]

The facts of the case are not disputed.

On 27 April 1987, Aurora and Claudio Olazo (respondents) mortgaged to Herminia Cando (petitioner) a parcel of land with improvements thereon to secure the payment of their P240,000.00 loan. The real estate mortgage was embodied in a written instrument titled "Mortgage of Realty." In the said instrument, the parties agreed that should the mortgagors fail to pay the loan within one (1) year from the date of the execution of the document, the mortgage shall be foreclosed.

Alleging that respondents failed to pay their obligation within the prescribed period despite demands, petitioner filed a complaint for judicial foreclosure of mortgage before the Regional Trial Court of Olongapo City on 16 February 1998.[2] Respondents moved for the dismissal of the complaint, arguing that the action for foreclosure of the mortgage has already prescribed; that petitioner is barred from filing the complaint under the principle of laches; and that respondents have already paid the mortgage obligation.

On 25 May 1998, the trial court issued an Order which reads:

> Acting on the Motion to Dismiss on the ground that the Action to Foreclose Mortgage of Realty dated April 27, 1987 has prescribed in accordance with Article 1142 of the Civil Code "that the action for foreclosure of mortgage prescribes after ten (10) years" and it appearing that this Complaint was filed on February
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> 16, 1998 after the expiration of the said period, this case is hereby DISMISSED.
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> SO ORDERED.[3]

Petitioner sought reconsideration of the Order but her motion was denied by the trial court,[4] prompting her to appeal the case before the Court of Appeals.

In her brief as appellant,[5] petitioner interposed a lone assignment of error, to wit:

> THE LOWER COURT HAD CLEARLY ERRED IN DISMISSING THE PLAINTIFF'S COMPLAINT IN THE INSTANT CASE ON THE GROUND OF PRESCRIPTION OF ACTION.[6]

The appellate court dismissed the appeal on the ground of lack of jurisdiction. It found that the issue raised in the appeal is a pure question of law, that is, what is the proper computation of the ten (10) year prescriptive period for filing an action for foreclosure of mortgage. According to the Court of Appeals, the dismissal was based on Sec. 2, Rule 50 of the Rules of Civil Procedure which provides that an appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed.[7]

In the present petition for review under Rule 45, petitioner claims that the Court of Appeals erred in holding that her action to enforce the mortgage obligation had already prescribed. She posits that the ten (10) year period for foreclosure of the mortgaged property must be counted from the time the stipulated one (1) year period within which to pay the loan elapsed. Thus, it should be reckoned from 27 April 1988, and not 27 April 1987, or the date of the mortgage instrument.[8] Petitioner thus prays that the Decision of the Court of Appeals be reconsidered and/or set aside and the case remanded to the court of origin for further proceedings.

On the other hand, respondents point out that the petition is a mere rehash of the issues and arguments raised and resolved by the lower court and the Court of Appeals. They insist that the ten (10) year period for foreclosure is counted from the date of the execution of the mortgage deed.[9]

The trial court's dismissal of the complaint for judicial foreclosure of mortgage is a final order which terminated the litigation of the case and left nothing more to be done by the lower court. Petitioner had no more remedy but to appeal the order of dismissal.

There are two modes of appeal from a final order of the trial court in the exercise of its original jurisdiction'(1) by writ of error under Section 2(a), Rule 41 of the Rules of Court if questions of fact or questions of fact and law are raised or involved; or (2) appeal by certiorari under Section 2(c), Rule 41, in relation to Rule 45, where only questions of law are raised or involved.[10] If the aggrieved party appeals via a writ of error under Rule 41, but it turns out that only questions of law are raised, the appeal shall be dismissed.[11]

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or falsehood of alleged facts.[12]

The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[13]